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10-15-2014

### Statement by Anonymous collected by Heather Westleigh on October 15, 2014

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### **General Information**

**Private or Public Statement?** - Private

**Statement Provider:** Anonymous

**Date:** October 15, 2014

**Location:** Caribou, Maine

**Previous Statement?** No

**Statement Gatherer:** Heather Westleigh

**Support Person:** N/A

**Additional Individuals Present:** Gail Werrbach

**Recording Format:** Audio

**Length of Recording:** 1:05:38

**Transcriber Note:** This statement is anonymous at the request of the individual. Any redactions have been done with the approval of the statement provider in an effort to protect his/her confidentiality.

### **Recording**

**HW:** So, we are now recording. My name is Heather Westleigh, and it is October 15, 2014. I am in Caribou with:

**GW:** Gail Werrbach.

**HW:** And, could you please state your name?

**A:** Yeah, [REDACTED].

**HW:** Thank you. Um, the file number is ME-201410-00106-001. Have you been informed, understood, and signed the consent?

**A:** Yes.

**HW:** Okay. Um, any disclosed information that indicates that a child is in need of protection, or there is an imminent risk of death or serious bodily injury to an identifiable person or group, including self, may not be protected as confidential.

**A:** Fully understood.

**HW:** Thank you. So, could you tell us a bit about your current or past employment as an attorney? Such as how many years you've been working? [00:01:19.03]

**A:** I graduated from the University Maine School of Law in 1996. Passed the bar for Maine in October of '96. And sworn in later, before October of '96, or later that year. I think it was actually later in October 1996. And began practice right off in Presque Isle, Maine, um, with my father originally. That continued for- from 1996 until ... 2000, or 2011. March of 2011. I've been, I started with Currier and Trask in Presque Isle as an associate. I'm now a shareholder there. So I've been there — It'll be four years this coming March. [00:02:14.05] And I've done child protection work as a parent's attorney since, roughly, late 1996 until the present. And a limited amount of work as a Guardian ad Litem, um, prior to the rules changing to require an additional level of training. I've been picked a couple of times off the roster list. Not in child protection cases, but in parental rights responsibilities, divorce cases involving parental rights responsibilities, after I made the decision not to take the additional training. So, probably the first four, maybe five years of practice — 1996 through 2001 — involved some work as a Guardian ad Litem, but at all times after graduation — or not graduation, law school — but swearing in as an attorney, I've had a ... I've represented parents.

**HW:** Okay, um, approximately how many Child Welfare cases have you worked with?

*(pause)*

**GW:** We've decided that's the toughest question. [00:03:32.01]

**HW:** Right?

**A:** Yeah.

**GW:** It's a hard one.

**A:** Yeah, I'd say more than, more than 30, less than 50.

**HW:** Okay. [00:03:52.09] When did you first learn about the Indian Child Welfare Act?

**A:** It would have been my first case that involved that type of connection. That probably would have been 2000, oh no, 2000. It wasn't, I eased into the practice, and it wouldn't have been past 2000. So I'd say 2000 is pretty safe.

**HW:** Good estimate?



**A:** Yeah.

**GW:** Let me just ask another — Of the number of Child Welfare cases that the parents that you've worked with, can you roughly think of the number or the percentage of parents who are Native American?

**A:** That's what I was doing when I was trying to do that last question.

**GW:** Oh, trying to do the 30, 50?

**A:** Yeah. And I think ... [00:04:58.04] when I talk about a case sometimes it will, there's two cases but one mother or, okay, so, I'd say one — It's a distinct minority. Three or four, It's not a large amount.

**HW:** Okay. And I thought that question was on there, but then I didn't see it. So I thought, well maybe, it's somewhere else.

**GW:** Yeah. No, I think it's just not written as clearly as it could be.

**HW:** Yep. And so it sounds like you were made aware of the Indian Child Welfare Act by association with that case? Or was there another way that you were made aware?

**A:** Just when I got the case and I saw, I think, reference in the petition for child protection that there was, um, a Tribe was involved. I looked into the significance of that and then started to research the Indian Child Welfare Act. ICWA. [00:06:04.27] 'Cause it would have been at the pre-jeopardy stage. So.

**HW:** Can you comment on the type and amount of training you received relating to ICWA?

**A:** Other than passing reference in a Bridging the Gap program, which is a program that all attorneys that had studied for and passed the Maine bar were required to take before swearing in, very little. Yeah, there was very little specific formal education on it. There, so it would have been very minimal beyond what I did myself after it became necessary to educate myself on it. Prior to that it, limited to, I think, some passing reference in the Bridging the Gap program. And then only because the, one of the facilitators of that program — There was some reference in the materials to child protection cases in general. But I don't recall whether there was or wasn't any specific reference to ICWA. But one of the, I remember one of the facilitators mentioned it and brought it to the attention of anyone that was participating in that program, that it exists, and if you have a case where someone is associated with a Tribe, you need to be aware that it exists and educate yourself.

And I know, since that time, I think, through the now Maine Commission on Indigent Legal Services, [00:07:41.02] which is, I don't — See, this is where I don't do things justice. It's been in existence now for about three or four years. They do require some specialized panel training if you're going to accept appointments through the state of Maine. And the vast majority of attorneys that are involved in these cases are appointed through the courts, because the participants generally don't have the ability to hire private counsel. But the Maine Commission on Indigent Legal Services has included some more specific training relative to ICWA in the training that they require attorneys to go through in order to be rostered to accept cases, child protection cases. So, it's gotten better, I would say. But when I, out of the gate, it was, uh, self-taught. [00:08:35.13]

**HW:** Yep. Um, the next few questions ask about your experiences in working with the Child, Indian Child Welfare Act. What were some of the challenges in initial identification of a child as Native American?

**A:** Well, there wasn't, there wasn't, there's information that comes to an attorney comes — Usually, in a child protection case, you're getting information from the court and perhaps the department prior to ever speaking to your client. So I think — And I've developed a system where you receive that information, you accept it for what it's worth, but you don't forget to ask the people that you're meeting with whether or not there's any Indian heritage. So that, if that has been missed, it's picked up upon. So, [00:09:32.08] um, it's, you ask the person who's directly affected whether it's involved, as opposed to just accept what you've read in the paperwork that you receive from either the court or the department.

**HW:** And that's a regular part of your process?

**A:** Yeah. Yeah. I think it should be for anyone involved. And sometimes, you know, I've had cases where you encourage someone to look into it further and, I mean, you're left with how much effort they want to put into that as well. I've heard from people, 'Well, I think there might be a connection here or here.' And I'll say, 'Well, you really need to look into that.' And I'll bring it to the attention of the department or some other people, and help them as much as I can to investigate that. But ... and that's happened one time I can remember. That case subsequently was dismissed, so I didn't push any further, you know. But to this day I don't know whether or not —

**GW:** The client pursued that?

**A:** The client pursued it or had the case continue to go forward whether it would have been an ICWA case or a non-ICWA case. But the client in that instance wasn't very interested in, even though I educated him — it was a him — on, from a practitioner's perspective, the benefits of coming under the additional protection that Act provided him. But the case never, I think it was dismissed pre-jeopardy. So, in that four-month period between the time the petition was filed and we were proceeding to a hearing, um, it was dismissed. So, I don't know how that ever — And I haven't heard from him since, so. [00:11:28.21]

**HW:** Okay. What about notification to the, of the children to the Tribal Child Welfare? Do you have any experience with that?

**A:** Notification of the children to the Tribal Child Welfare? I guess I don't understand.

**HW:** Or of the situation.

**GW:** It's probably, it may be something more, it may be something more that happens at the department level. We sort of have this laundry list of aspects of Indian Child Welfare, which some aspects are really relevant for attorneys; some aspects are really relevant for the department. Some of them, the judges say, 'Well, you know, three quarters of these has to do with the department, not with me.' So, we sort of just go through each of these. And, I guess this one has to do ... I think refers to what you were talking about. You get information from the department, the department, um, should, if the department identifies the child as Native, they should be notifying the Tribe that this child's come into care.

**A:** I see.

**GW:** So, whether or not you've had any experience with that or any situations related to that.

**A:** No, I haven't. I've never had an experience where I've been the one who's notified the Tribe. I, in that case that I just referenced, I was the one that notified the department. And I think they began measures to notify the Tribe involved in that case. [00:12:59.16] And, again, it was never, it never got to the next level. So, I don't know how far they took it. And it was really never implicated from my perspective, because we didn't get to the contested hearing on the issue.

**HW:** Have you had experience working with the Tribal government at all?

**A:** Yeah. I have directly with certain Tribes: the Mohegan Tribe, and the Micmac, and Maliseet. And there was a — I forget the name of the Tribe — the individual again. The case that's dismissed now, and he has his children, including one that he didn't have at the time the petition that was filed. It was a Tribe in South Dakota, and I forget the name.

**HW:** Okay. Um, was there any question of jurisdiction or residence in those cases in terms of who —?

**A:** Not in the cases that I had. No.

**HW:** Okay. [00:14:08.07] Can you describe some of the challenges with child custody hearings that involved ICWA?

**A:** That involved ICWA? No. I mean, I think, I mean they're not — It's a, differing burdens of proof. The courts are well aware of that. But at the end of the day, judges have a significant amount of discretion whether it's an ICWA case or a non-ICWA case, and whether or not something rises to the level that it needs to rise to get over that burden of proof. It's really a matter of discretion. And the judge has, the parameters of the discretion are pretty wide, so. Nothing specific to ICWA. No. Just as a parent's advocate sometimes, I think the breadth of the discretion is a lot broader than I think it should be. I think it could be tightened up a little bit, relative to whether or not jeopardy, as that term exists, by Maine law exists, or if it does exist, what the appropriate disposition is. I mean, is it always necessary to remove custody of children if jeopardy exists? Or is it possible to address it in a manner that permits the parents to retain their fundamental liberty interest to raise their own children? All parents. [00:15:44.21]

Then the additional protections relative to ICWA. I did have one case where it was a post-termination case where the adoptive parents of an Indian child subsequently made the decision that they couldn't continue to care for the child. And we successfully came back in and petitioned under ICWA for a, for the biological parent to become back involved. And that's going incredibly well now. So that, that was a bit of a challenge, 'cause you don't see that a lot. At least in my — I'd never encountered it, never heard about it. [00:16:30.15] And, um, that's going well now for that child and that child's mother. The connection to the Tribe is through the father, um, but ICWA was centrally used to benefit the mother as well, or essentially the child. And the father's not in the picture anymore, but mom is. So that was a bit of a challenge.

**GW:** So, in your capacity as the parent's attorney, are you, what's, help me, I guess, sort of understand the relationship with the Tribal attorneys as well in those proceedings. Because they're —

**A:** My relationship with them?

**GW:** Yeah, or just how that works. 'Cause you're responsible for —

**A:** The parents.

**GW:** The parents and the Tribal attorney is responsible for the Tribe.

**A:** The Tribe's position which is —

**GW:** The Tribe's position as the third parent. [00:17:31.24] But I would think sometimes that would involve your obviously working —

**A:** With the Tribe —

**GW:** With the Tribe or there's common goals or if there's —

**A:** Definitely. If, it really depends upon what the Tribe's position is, in a case where — But they can always be used as an asset in a case that involves the Tribe siding with the petitioner, which is the department. Obviously, uh, if you have a difficult client who doesn't accept that



there are some deficits, having them see that, 'Listen it's you and me and everyone else saying these, so you're not just hearing it from me, that there's a problem that needs to be worked on. [00:18:19.13] Everyone else is saying it, including the Tribe.' And it helps you essentially help them realize that certain changes need to be made.

And I don't always agree with the Tribe. And sometimes they are advocating for the parent, you know, taking a position that is more or less consistent with what a parent's position is. And in that way, they help you achieve the parent's objective, whatever that might be. [00:18:58.24] In my experience, the Tribe is very, is a lot more impartial when it comes — If there's any partiality it's to the child, but they're a lot more — They're not the barrier to these types of issues and discussions. And they help you, regardless of whether it's helping you assist a parent who doesn't accept things as quickly as they might or should, and also help you against — I don't want to say against, that's a strong term — but in your arguments with the department upon certain issues. For instance, the case that I just spoke about that involved a return of the mother, the biological mother to the picture after the adoptive placement failed, that the Tribe was instrumental in helping push that through. They recognized that as a benefit to the child. [00:19:53.28]

**HW:** And you had mentioned that, you said the Tribe isn't the problem or isn't the barrier. Do you see anything else that is a barrier?

**A:** I think in many situations the Department of Health and Human Services is the barrier. *(laughs)* Yeah. And some of that just comes down to personalities, you know? And accessibility. It's communication. But I, I don't — I've never encountered a situation where I've disagreed with the Tribe's assessment. Where I've encountered many instances — and I'm talking about a breadth of child protection, not just ICWA cases — where I disagreed with a, not as an adv-, not only as an advocate, which you expect people to disagree, but looking at things objectively. Like, this just doesn't make any sense. With the department, I can honestly say that. [00:20:50.03] And if they were ICWA cases, maybe things would have been different, and maybe my suspicion that the Tribe would have been an advocate for the right position if there is such a thing. If it was an ICWA case that would have been confirmed. But you know, I'll never know it wasn't an ICWA case. So, but in my — It's limited. My experience with the Tribe attorneys and ICWA generally speaking is, I can't recall in any of those cases — and again, there haven't been many, and that's the minority — have I had a disagreement with the Tribe.

**HW:** Thank you. [00:21:42.26] Any specific challenges in, um, specific ICWA procedures for obtaining consent involuntary out-of-home placements? Have you had experience with — ?

**A:** In involuntary?



**HW:** It says involuntary.

**GW:** I think that's getting at what you were talking — I guess ... differences when the department wants to move toward an out-of-home placement. I assume you're in that position quite a bit with the parent. That's not what the parent wants, or it's something that the parent may come to that decision because there's things in the parent's life that he or she has to make safe in order for a kid. But yeah, it's sort of getting at that whole process when a kid comes into the, when a child comes into care. What the challenges are? What your experiences are from your position as the parent's attorney?

**A:** You're talking about, as a parent's attorney in ICWA cases? Or in general?

**GW:** Start with ICWA cases.

**A:** In, I think the short answer to your question on an ICWA case, is that I just don't have a lot of experience. That there's never been real contest on that. But yeah, all the time in other cases where we're arguing one jeopardy doesn't exist. If it does exist, it's at a level that's not sufficient to remove custody and require that there be an out-of-custody to another entity, essentially placement out of the home. [00:23:31.23] But I, with ICWA directly related cases, I haven't encountered any difficulty in those cases.

**GW:** Because the department, what do you think makes that different? And I know it's a small case for comparison for ICWA, but is the department not pushing for out-of-home placement as much?

**A:** No. The Band, I can't say the Band, but the Tribe's position essentially — Whatever that may be, helps an attorney either with the department, in that it shouldn't be an out-of-home placement, or with the client in if it is a request that it be an out-of-home placement with the client because I view them as a much more — It's not as an adversarial relationship. And it helps, like I said earlier, helps in my experience, again, which is limited, it helps the client gain I think, gain and maintain an appreciation for the issues and, okay, maybe there is something that requires this as or makes this appropriate this out of, this out-of-home placement appropriate.

**GW:** So, sort of when the Tribe then recognizes maybe this child does need to be in an out-of-home placement, that can carry some weight in terms of what the parent has to process and come to grips with.

**A:** Correct. Right. Yeah, absolutely.

**GW:** Have, do you have a sense for those out-of-home placements if they stayed within the Tribe? Do you have any idea?

**A:** I know the department always suggests they're doing everything to make that happen. And they're always very receptive or they're — If it's not able to happen, if the Tribe isn't able to identify that placement, they're always getting the Tribe's okay, so to speak, to the out-of-Tribe



placement. So they're very, yeah, they are cognizant of the need to involve that. And I think they know that the judges presently sitting on these cases, in this county at least, um, require them to do that. [00:26:01.15] So it is — And it's a topic of discussion, in my experience, in any ICWA case that we've been involved with.

**HW:** Um, I'm skipping over a few questions because it sounds like you haven't had transfers to Tribal court.

**A:** Not once.

**HW:** Okay, great. I just wanted to confirm that as I skip things. When presenting an expert witness under ICWA, what criteria does the State use to establish a qualified expert witness?

**A:** Well, the ICWA expert that they use here is Betsy Tannian. I don't know if you folks know Betsy.

**GW:** She's one of my grad students.

**A:** Okay. So —

**GW:** Or, she was. Once a student, I'm afraid I always call them students.

**A:** Yeah. I, I'm —

**GW:** Don't let that stop you. Don't edit yourself just —

**A:** No, I'm not going to.

*(people talking over each other)*

**A:** No. What qualifications I, I just don't. I can't recall what her qualifications are.  
[00:27:04.08] I do get the impression that she's the only show in town. I don't think that there's — They haven't used anyone else in my limited experience in ICWA cases recently.

**HW:** So there's a, it sounds like maybe a limited pool.

**A:** Limited to one, frankly. *(laughs)* And when she, and when she testifies it's by ITV generally now. I don't know where she —

**GW:** She lives in Bangor.

**A:** Okay. So, it's set up for her to participate by interactive television. We recently just had a case involving Betsy, where she was called as an ICWA expert and advocating for an out-of-home placement. It went to a contested hearing. The fight wasn't with my client. It was with the other parent. And she did, she did find — So, beyond that, I don't know what the department does to review their qualifications, but she certainly appears well-qualified to express those opinions.

**HW:** Okay. Thank you. What do you consider active efforts to prevent the breakup of an American Indian family before ordering an out-of-home placement for an Indian child?

**A:** Well. Without getting specific, I would say absolutely anything available, short of a removal associated with a safety concern. Either there's significant physical safety concern or emotional safety concern, and absolutely everything possible to maintain an in-home placement, if it can be maintained. Again, the only, the only ... caveat to that is a threat to their physical or emotional wellbeing, you know, a significant threat. I think too much, and again, I don't want to say just limited to ICWA cases, but in general, I think not enough attention is given to how much harm is done through that process. And we've all heard it many, many times. The cure is worse than the disease. [00:29:30.04] And, you know, I've seen that in cases. And I've seen, I've, again, I'm speaking generally in child protection cases, not just specific to ICWA.

**HW:** Yeah. And I hear what you're saying. Do you see a difference between the active efforts and the reasonable efforts? So active efforts that are required for ICWA cases and reasonable efforts that required for —

**A:** Non-ICWA? I ... I, frankly I don't. I don't see a big difference. That's been my experience.

**HW:** Okay. In what ways do you see the Indian Child Welfare Act and the Adoption and, and the Adoption and Safe Families Act working together, if you do at all?

**A:** [00:30:31.16] I guess I don't feel like I can even answer that.

**HW:** Okay. That's fair. Over the course of your work as an attorney, what do you see as barriers to the State's promoting ICWA compliance?

**A:** Barriers to promoting ICWA compliance? Well I, I don't think it's a barrier anymore. I think previously there should have, there could have been more education on that, um, and there wasn't, at least not — I'm sure there was, if people were searching for it actively, but since the Commission came around and they require the training that they presently require for any attorney who is going to take a child protection case or be appointed to represent a parent in a child protection case, that's no longer a barrier. So, that the education piece, I think, previously would have been a barrier. But, that's much less of a barrier now, given the advent of the Commission which requires training in many areas of child protection law before you can take an appointment. Before that, I don't know, other than taking that Bridging the Gap program, that there was any requirement that there be any specialized training, whether with child



protection law in general, Indian Child Welfare Act. You know, anything. So now I don't, I guess I can't, I don't see any barrier presently. [00:32:21.00]

**HW:** Okay. Do you see any way that the State Child Welfare system could improve in terms of ICWA?

**A:** In terms of ICWA? I think education is still more the piece. To make sure that that's available to — I mean I, there is now a requirement that attorneys who, at least who are appointed that take child protection cases have gone through training, which includes, my understanding is, a piece on ICWA. That, that's been in place now for about four years. Education, I think, is primarily the piece not only for practitioners, but probably judges. I don't know what education judges have in that area. I think that would be the primary two things. [00:33:11.23]

**HW:** Okay. That's a good point, um, the education for judges.

**A:** I don't know if they're required to do anything on that.

**GW:** I've done, I've done a couple interviews with judges, and I think they paint probably a similar picture, you know, to the attorneys, in terms of not really having that systematic education through, sort of the 80s and 90s, and then at some point — I don't have my dates right either, but I think at some point, a recognition that either, that there was, um, at least some pieces of education, I think, that were coming to the non-Tribal judges, 'cause obviously, the Tribal judges know. But for the State courts. I think it's probably a similar, slight-, similar progression in terms of doing that.

**A:** I see. I wouldn't be surprised, but I don't know. I don't know what they're required to do —

**GW:** (*simultaneously*) And I don't know how systematic or what the, I've forgotten, to tell you the truth.

**A:** I know I've seen judges at the trainings that are offered by, through the Commission and otherwise through the, through Maine. So they participate in those. But I don't know that they're required to. Some do. Some have been there. [00:34:38.26]

**HW:** Do you see any particular strengths in acting or complying with ICWA that the State possesses?

**A:** In, well, the State I don't know, but the county, I know the judges here are, the present judges here are very keen on ICWA compliance. Any case where it's implicated, they do, they do press the department's attorney relative to the ICWA expert, the involvement of the Tribe.

The, in fact, the last hearing I had that involved ICWA, the judge heard from not the ICWA expert, but the Tribe's representative, and that Tribe representative gave a factual account. Looking at it objectively might lead one to believe the ability of that individual to speak to the agent of the department, for whatever reason was something much less than it should have been. And the judge stopped the proceeding and asked him pointedly — and judges don't frequently ask questions of witnesses — whether or not he thought the communication could have been better. And he said, did his best to be nice, but at the end, essentially gave a 'yes.' And he says, 'Well, don't hesitate to bring that to the court's attention any time it happens.' [00:36:10.28] And he directed his comments directly at the depart-, the judge directed his comments directly to the department about making sure their client is sensitive to that. And I say that all the time as a parent's attorney. And he's suggesting that there's a lack of communication between the department and my client. And I've never gotten a similar response. So it seemed to me a little bit, I wasn't actually: 'Listen to all of us here. I'd like a bit of the same.' So, but he did — I can't say that the judges here aren't very tuned in to what they need to do in ICWA cases.

**GW:** And is that a change over the years you've practiced?

**A:** Oh yeah. I think so. [00:37:04.23] Yeah. I think ... I think so. I'd say over the course of my involvement with these, which is what, 18 years, it's increased, compared to what it was, compared to what it is.

**GW:** And what do you attribute the change to?

**A:** Not sure. I'm not sure.

**HW:** Are there any specific policies or procedures that have been put in place that you think might have helped towards that?

**A:** Nothing that I'm aware of. [00:37:40.02] But I, so, I can't say that there hasn't been or isn't. Just nothing that I'm personally aware of.

**HW:** Okay. When we go off-script, I have to figure out where to pick up. I like the off-script. I just want to get back on track.

**GW:** Yeah, well, the questions are just sort of, we put everything in there in case we forgot something.

**HW:** Yeah. Absolutely. Do you see any additional, anything other than what we've talked about that are weaknesses in terms of how the State Child Welfare, um, ensures ICWA compliance? Anything that you think might — ?

**A:** Just more education. I think if there's any weaknesses, just continuing to keep it out there and to keep people educated on it. [00:38:30.12] And for that matter, on the just child protection statutes in general, which is, which is, again, something that really wasn't there before the mandatory training required by the commission. So, that's been a good thing. And I

don't know whether some of these other changes — I don't want to say changes — but some of these other things have been noticed, have come about because of that training.

**HW:** That's a good point. [00:39:05.02] And I know you haven't had a lot of experience with the Tribes, but from what you have, any exposure you have had with the Tribal communities, what strengths do you feel the Tribes possess in working with the State for ICWA compliance?

**GW:** Are there ICWA departments or ...

**HW:** Right.

**A:** Well, there, Sarah LeClaire was a great advocate for the Band in, here. [00:39:35.17] And, she would not permit, or do everything to prevent a failure of compliance. So, that's not necessarily the State though, that would be the Tribe's attorney. So I, I don't know what, I don't know what the State has done.

**HW:** That's good feedback. though. That those additional players —

**A:** Yeah. I think the Tribe's attorney is on the front line when it comes to forcing State compliance with ICWA. Keeps everyone honest.

**GW:** What about in terms of if you had any experience in working with the ICWA, the Tribal ICWA coordinators or the folks that are doing that? Were there things that they were doing that were, I guess, especially helpful in —

**A:** Nothing especial-, no. I think — I'm just going to speak frankly — some of them could have a louder voice. They're not, they're not, I mean, they're invested with a very important purpose, but they're not invested at the same level, at least in my experience, the ICWA coordinators, as the level of a parent, say, in this proceeding. [00:41:07.25] So, and again, not mentioning names, but I've seen some indifference in that capacity. But I've also seen attorneys not prepared to accept that indifference and sort of pushing through it with a better idea of what needs to be done. That's, and, 'cause I've participated in some team meetings, um, so my exposure to the coordinators has been in that venue. But I've seen it, what I would — My comment is really based on what I've seen in the court proceedings. Which, generally speaking, the only time you're ever all brought together on any one issue involved in any one of those cases is either in a team meeting or at court. And the players or the participants in the team meetings generally aren't always all of the people that do appear and participate in court. So. I've, my experience with the coordinators. Again it's —

**GW:** It's variable, it sounds like what you're saying.

**A:** It is. [00:42:23.26] Yeah. But —

**GW:** In terms of people's skills or their comfort —

**A:** I don't know what it is. (*talking over each other*)

**GW:** — comfort in the court setting —

**A:** I think, and it could be, essentially be that. That they're just not comfortable in the court setting. They're not, they find it difficult to speak with people that they know very little. So, maybe more training for the coordinators. 'Cause usually you see, it's — And there's an exception to everything — You say, you see usually, but usually you see someone that has, is supposed to be advocating for a position, beating on their attorney to do more. [00:43:06.09] And it's funny when you see an attorney essentially bringing their client along. So, but no names. (*laughs*)

**GW:** No, that's fine. That's fine.

**HW:** Can you speak to the importance of attorneys learning about and having a knowledge of American Indian family structure and culture?

**A:** I think it'd be great. I think it's always a good thing to learn more about anything that you're involved with actively. So, it helps you understand why ICWA's there. I think it would also help you to, I, and I don't think it applies — It would help some attorneys, um, feel better about and more comfortable with advocating for what they should be advocating for under ICWA. I don't know if that's clear or not.

**HW:** That's — I think it's very clear.

**A:** So, I mean, I could use more education on that, frankly.

**GW:** We all could.

**HW:** [00:44:20.01] Can you speak to the importance of an Indian child who is placed in out-of-home care to be placed within reasonable proximity of his or her natural family?

**A:** Oh, it's incredibly important, I think, for that to happen. And again not, Indian child and non-Indian child, I think it's incredibly important for that to happen. But I, it's incredibly important, so, I guess that's as pointedly as I can make it. Any talk towards that question. I think it's very important.

**HW:** And, um, going along with that, the importance of children who are members of, um, of a Tribe being able to participate in their cultural activities and events?

**A:** I think that's incredibly important as well. I think anything that can allow them to stay connected to them — being Indian child, non-Indian child — to stay connected to what, you





know, what is important or has been important to them if they've had the opportunity to experience that up until the point in time that life has been disrupted. [00:45:45.28] Obviously it's incredibly important, and they should — If they're too young to have been actively involved with that before a removal, um, they should be given the opportunity to learn about it. They're going to have, any child is going to have those questions about their past. And that connection, I think, the more they can stay connected to that, the good parts of it certainly, the better.

**HW:** Do you think ICWA does enough to protect the rights of Indian children or the Tribes?

**A:** I don't know how much more it could — It does, yeah, I think it does enough. It's just, it's I think, it, like the child protection statute — The manner in which it's implemented is really where it comes down to. I don't know that there's much more that can be done legislation-wise. But, the education piece on the people that are working within the parameters of the statute and exercising discretion within it is really, I think, where more of the fight is. [00:47:08.19]

**HW:** Thank you. How could the Child Welfare system improve in terms of ICWA?

**A:** Education. I think, again, for practitioners and judges and not only maybe specific to ICWA, but specific to some of the reasons behind ICWA. Some of the reason why the legislation was put into play.

**HW:** Yeah. I think a lot of people don't know this still.

**A:** And I frankly don't, I think I know some of the background, but I don't, I don't have nearly enough knowledge that I would like to have regarding, just the Tribes up here.

**HW:** If you could change anything or make anything happen for Native American children involved in ICWA, what would you do?

**A:** Just ... [00:48:11.21] I think more education, more education for the practitioners and the judges around exactly what they are doing. More education on the effects in general. I think, 'cause I, you know, you don't hear much through education that you're given regarding the statute, all of these good intentions about looking at the other side of, okay, you're trying to correct these behaviors, you're trying to address this perceived issue, but the manner in which you do it, I think, and the alternatives available to you and the effect, which I don't think is weighed in to that whole analysis very often. The effect of the cure on the, on the person you're trying to protect, as opposed to the risk that you're trying to protect them from. And that's more of a psychological piece, I think, that you know, child psychologists educating everyone on just, I think, what is ignored too much, which is the effect of this disruption to a young person. [00:49:31.01] And even infants, I mean, trying to recover from that, the attachments and everything after that's happened and visitation once or twice a week. It's incredibly inadequate.



I don't think there's enough education across the board on the effects of the action meant to protect children. The effects that those actions are having on children in a negative way.

**HW:** Very important. Do you have anything else that you want to make sure that —

**A:** No, I don't. Any questions I'll ask them. Sarah told me I had to come so ... Sarah LeClaire. *(laughs)* She did. I know she did.

**HW:** There's nothing the questions I asked didn't touch on that you feel is really important to communicate?

**A:** Just, I think you need decent, caring judges that probably don't find a lot of comfort in their job doing the right things. And there's a lot in that statement. I think, and whether or not that happens, and that same comment, I think, applies to practitioners. And they need to, education is a big part of that and that includes much better — which is, and I, you just don't see it anywhere — much better education on, really the effects of what people say is, needs to happen in a given instance when they weigh what's appropriate or not. 'Cause a removal of custody is such a huge thing. And, if you look at the child protection cases, ICWA, non-ICWA, I refuse to believe that every single case that's filed requires a removal of custody. Is that always what's necessary in order to address this risk? And if it is, why do we include in the statute the parts of it that permit you to permit a child — You know, it says right in the statute the purposes of the disposition are to protect a child from jeopardy. To permit a parent or parents to retain custody if appropriate conditions can be put in place. So it's always to protect from jeopardy, but to do it in the least intense-, invasive way. *[00:52:05.18]* And I don't, I think there needs to be more education on maybe what those ways are and more education on how much damage is done when you just jump to the removal of custody piece. And I'm usually, and I think most practitioners, parent's attorney practitioners are pointing at the department that it's seeking, having hope that the court will do the right thing as well. And not very many contested hearings, you know, a distinct minority of contested hearings, for one reason or another, result in if there's a finding of jeopardy, custody being able to be left with the parent. So, I guess that'd be my main point on any of them. The education piece and to include more information on how much damage is done to kids when they're removed. *[00:53:09.15]*

**GW:** How does the department do in terms, your sense in terms of working with parents around what they need to do in order to, um —

**A:** They relu-, they'll, they reluctantly, in my experience, get to that line. You're pulling them there. I don't- I don't find any comfort in having to pick up the phone and call the department and say, 'Hey we, what needs to be done here in order, from your perspective — Not that you're right, okay, 'cause you're all —' Usually, when I approach them it's like at a team, a very early team meeting. Okay? You've got a parent who doesn't know whether they can trust you yet, one, so you want to try to build that trust, but sometimes the best thing you can do is tell them essentially what they've heard from other people before, but maybe help them appreciate it in a different way because they just have a lot of animosity towards this person over here who's saying something similar if not identical to what you're saying. Just, and the



degree of respect that I think they get — ‘they’ being a parent — from the department, is not very high, usually. [00:54:31.08] There's a lot of judgment, there's a lot of punitive type actions, and which isn't, doesn't lead to anything positive. But if, when the department says, ‘Well, this is necessary in order for you to get a return of custody of your children,’ they should approach it just a different way. Say, listen, and I can be a better parent, I'm a parent. I can be a better parent. All right? You agree, you could be a better parent as well. Yes. Well good, we're on the same page. Why don't you look at it this way? You, we don't agree with you, that these problems exist at this level — ‘you’ being the department — at this level so that custody needs to be returned. We disagree with you at that point, but we do agree that we can become a better parent. We'll do this service, this service, this service or whatever else you identify in order to become a better parent between now and, say, a jeopardy hearing, but we're not going to sit here and agree with you that we're, we're something less than minimally sufficient at the present time. And if it's, when they understand it that way, then they find it easier to do things that could improve themselves, with ‘they’ being the parent. [00:55:48.28] Until that point, they think by, by agreeing to these people and doing all these things that they say are necessary in order for me to either keep my child or obtain a return a custody of my child, I'm admitting that I'm deficient in all these ways. So.

**GW:** How does that play out when it's an ICWA case? When it's an ICWA situation? Does the Tribe have —?

**A:** Well, the Tribe generally has — That's what makes it different from a non-ICWA case is the Tribe's involvement and —

**GW:** And they can specify services —

**A:** Exactly. [00:56:27.22] Frankly, I think it's easier, like I said, for a parent to hear, um, what the Tribe is saying. Usually it's a little bit more respectful and in a different way than what the department is suggesting. And —

**GW:** How does the Tribe, can you, I know you can't tell me cases, but can you give us an idea of how that's communicated to the parent differently when it's coming from the Tribe?

**A:** Well, one, it's the, one, it's the, I think it's just the accessibility — I mean, the ICWA, the person who's on point, the coordinator or whoever else is involved for the Tribe is, in my experience much more accessible to the parent —

**GW:** Oh, okay for calls, for visits — *(talking over each other)*

**A:** Exactly.

**GW:** For you for contact with the parents. Okay.

**A:** Right. And I think that alone, that alone without anything more even if they're, even if they can't speak great to people or don't find it comfortable doing that or don't like the court system, that accessibility alone and the ability to build that relationship. And it's, [00:57:36.08] it's not judgmental. It's, makes what you have to say easier to — I don't want to say sell — but easier for someone to accept.

**GW:** So, do you think, so they have more contact, it sounds like.

**A:** More contact and a different approach, in my experience. And I think it's a product of ... specific training perhaps, a product of a lack of other specific training. I don't, what the department caseworkers get, for the most part there, there's exceptions, but many times their approach is to — You know, it's just, we're the department. And it's maddening that, for an attorney who's not involved, I mean, I'm just helping someone with their problem through the statute; that's maddening to me. I can't imagine how — If I were sitting in this chair over here, as a parent would feel similarly situated.

**GW:** Anything else that you think the ICWA at the Tribal level, with the ICWA coordinator or other Tribal members?

**A:** I don't know, is there any training — the ICWA coordinator — what, I don't know what training the Tribe requires for them, one? Two, whatever that is, if it doesn't include some just general education on, I mean — With, you know, the experience factor, too, is — I don't know how you replicate that, but.

**GW:** It's variable. I mean there's some coordinators, some ICWA coordinators that have been doing it for many years.

**A:** I'm sure they're wonderful.

**GW:** And some who haven't. Some are younger. Some are old. I mean, it's —

**A:** Yeah. Maybe some more training for younger ICWA coordinators on the system. [00:59:39.11] And, and, how they, how their, what their role is within that whole system. That's the impression I've got recently, is that they're ... Yeah, they're just, they're really —

**GW:** They're young.

**A:** They're not, you know, in there in a way that — They need more confidence that, and I think if they knew what was going on and why it was going on, um, maybe they'd be better able to advocate for their position without the attorney. And sometimes that's good and sometimes that's bad. But, in that position, I can't imagine that more education, and just the way the system works and the role within that system would be a bad thing. I think it could only be a good thing.



**GW:** Yeah. And, of course, it's different because the two Northern Tribes don't have a Tribal court. So it's obviously — I shouldn't say obviously — but my perception is it's different present — You know, working within your Tribal court system than it is when you're working across jurisdictions with the State. *[01:00:45.17]* And that's one of the pieces that we're finding. Just there are very different systems depending on whether they're — Between the Passamaquoddy and the Penobscot versus the Micmac and the Maliseet.

**A:** And that's, my experience has all been Micmac and the Maliseet. I don't have any Passamaquoddy or Penobscot. So I —

**GW:** But you know, we're looking at the whole State, so that's why we're trying to understand it in terms of —

**A:** Yeah. I have to believe the existence of the Tribal court is a great thing. *[01:01:19.07]* In these cases downstate, for sure.

**GW:** Well it's a, and I, it's a, the other challenge though, is the Tribal courts and the Tribes are not necessarily, don't necessarily have access to the same resources that the State does. So, though they may have their own Tribal court system, they're still dealing with the same mi-, the parent, the parent and the Tribal court who's got —

**A:** Terrible substance abuse problems —

**GW:** Serious substance abuse problem or mental health problem *[01:02:01.01]* is the same parent — I don't mean the same — but the same situation as the parent who's being heard here. But I thin-, but I, my impression so far is just very different, you know, different resources what the, what the Tribe —

**A:** — Can do as opposed to what the State is required to do —

**GW:** What the Tribe can do. What the State can do. What can they access in terms of services. Now whether, I don't know, it's just a patchwork and we're trying to kind of *[01:02:31.29]* figure out what that whole quilt looks like. And it is, there's a lot of, it's complex and there's a lot of different factors, factors involved.

**A:** Yeah, as far, but I guess, at the practitioner or judge level, or even non-parent participant level, I guess that applies across the bo, — you know, attorneys, judges, other coordinators — is just, is I think, more education on the system itself, but on the effect that the results of the system have on kids. *[01:03:10.10]* As opposed to: it's not all good. There's no other way to look at it. People, the department, I think, desperately wants to believe that they're riding the white horse all the time, but I'm here to tell you I don't think they are.

**GW:** Yeah. Yeah it's tough. It is, I mean I've heard my, some of our Child Welfare workers, you know, do the piece about there's only two things you can do wrong: you can either leave a child or you can take a child. So it is, I mean it's a tough position. *[01:03:49.23]* And not a lot of State funding to go in and do the kind of work that, or prevention that would really make it so those ki,- so those situations weren't rising to the position that they're in.

**A:** Right but then it's, it's not supposed to be this way, but you're dealing with children, and I think the inclination is to err on the side of caution. Not only for courts and for DHS workers. And, you're not supposed to, you're not, you're not, that's not how the system is set up. You know, your parents are able to raise their children, one. Two, if there is jeopardy and the petitioner proves it by, in a non-ICWA case, by a preponderance or an ICWA case by the higher standard, then you can disrupt that. *[01:04:43.20]* But too often, I think, parents are forced into this system. And, not required overtly, no one's saying you need to prove yourself. But they're required to take the offensive as opposed to the defensive, and not finding any protection that they don't have to, that's not necessarily what has to happen. And then, when you couple that with how much damage can be done with the removal — even if there are problems in the home — it's where's that child worse? But it's, like you said, very difficult system. *[01:05:27.10]*

**GW:** Well, thank you so much for meeting with us. I appreciate it.

**A:** No problem. Pleasure meeting you both.

**GW:** Thank you. It was very informative. *[01:05:38.23]*

**END OF RECORDING**